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Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1975

No. 75-1276

DORTHA ALLEN GUY,

Petitioner,

—v.—

ROBBINS & MYERS, INC.,

Respondent.

REPLY BRIEF IN SUPPORT OF CERTIORARI

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This petition for certiorari presents important questions for review. In refusing to apply Section 706(e) of Title VII as amended in 1972[1] to charges of discrimination pending with the Equal Employment Opportunity Commission (EEOC) as of that amendment's effective date, the Sixth Circuit decision is in conflict with a decision of the Ninth Circuit.[2] *Davis* v. *Valley Distributing Co.*, 522 F.2d 827 (9th Cir. 1975) *cert. pending sub nom. Valley Distributing Co.* v. *Davis,* No. 75-836. The United States has filed a brief *amicus curiae* in opposition to the issuance of a writ of certiorari in No. 75-836, and, accordingly in favor, in effect, of the issuance of a writ of certiorari in *Guy.*

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[1] 42 U.S.C. §2000e-5(e) as amended by the Equal Employment Opportunity Act of 1972, 86 Stat. 103, 105, set forth in the Petition for a Writ of Certiorari, p. 3.

[2] See Petition for a Writ of Certiorari, pp. 10-12.

In light of the substantial administrative problems which the conflict between the Courts of Appeals will cause the Equal Employment Opportunity Commission[3] and in light of the stated concern of the United States in No. 75-836, the petitioners respectfully suggest that the Court request the United States to file a brief setting forth the interests of the federal government.

Respondent suggests that the question of the applicability of the 1972 amendments to Petitioner's Title VII charge is not properly before this Court[4] because the Petitioner failed to raise this legal argument in the district court. The Respondent is in error. The pertinent facts concerning the question were presented to the district court and are uncontested. The petitioner presented an alternative legal argument in the Sixth Circuit in support of her position that the district court had jurisdiction to hear her claim of racial discrimination in employment. The Sixth Circuit heard the argument and ruled against the Petitioner, (18a; see dissenting opinion of Judge Edwards, 18a-23a). It has been the consistent rule of this Court to permit amendment of jurisdictional pleadings where the jurisdictional facts appear on the face of the record. *Willingham* v. *Morgan*, 395 U.S. 402 (1969); *Realty Holding Co.* v. *Donaldson*, 268 U.S. 398 (1925); *Norton* v. *Larney*, 266 U.S. 511 (1925); *Howard* v. *De Cordova*, 177 U.S. 609 (1900). *A fortiori* where the facts are presented and are uncontested in the district court and where the jurisdictional allegations are properly made it is appropriate to consider a legal argument based on these

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[3] See Petition for a Writ of Certiorari, pp. 13-15.

[4] Brief for Respondent In Opposition to Certiorari, p. 6.

facts and pleadings which was first made in the Court of Appeals.

Respectfully submitted,

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